



February 14, 2001

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-0556

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144153.

The City of Austin (the "city") received a request for 911 tapes, a CAD report, a witness list, and security camera videotapes from homicide and aggravated robbery cases. You inform us that portions of the security camera videos relating to the homicide and robbery cases have been released to the public. We therefore assume you are releasing those portions of the requested tapes to the requestor. However, you seek to withhold the remaining responsive information under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You assert that section 552.103 is applicable to a portion of the requested information because charges have been filed and arrest warrants issued in connection with APD #00-2160445, and because charges have been filed in connection with APD #00-2801524. However, in order for the city to meet its burden under section 552.103, it must establish that *the city* or an employee thereof is or will be a party to litigation. In this instance, we assume you are asserting that criminal litigation is pending with regard to the aforementioned cases. However, we have no indication that the city or any employee of the city is a party to the litigation. In addition, you have not demonstrated that the district attorney, on his or her own behalf, has requested that the city's information be withheld by the city pursuant to section 552.103. *See, e.g.*, Open Records Decision No. 469 (1987). As you have not met both prongs of the above-stated test, we have no basis for concluding that any of the submitted information relating to APD #00-2160445 or APD #00-2801524 is excepted from disclosure pursuant to section 552.103. As you raise no other exceptions to disclosure of this information, it must be released to the requestor.

We will next address your argument under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the investigations into the murder of Phillip Thomas [APD #00-2160528] and the aggravated robbery of the Pecan Food Mart [APD #00-2630056] are ongoing at this time. Based upon these representations, we conclude that release of the requested information relating to these two crimes would interfere with the detection, investigation, or prosecution

of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the requested information relating to APD #00-2160528 and APD #00-2630056 may be withheld from the requestor under section 552.108(a)(1).

To summarize, the city may withhold the requested information relating to cases with file numbers APD #00-2160528 and APD #00-2630056 under section 552.108(a)(1) of the Government Code. Information relating to cases with file numbers APD #00-2160445 and APD #00-2801524 must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

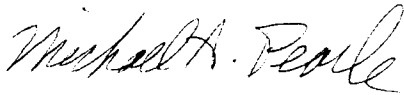
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 144153

Encl. Submitted documents

cc: Mr. Mike Woods
K-EYE TV 42
10700 Metric Boulevard
Austin, Texas 78758
(w/o enclosures)